

Speech of Pierre Elliott Trudeau on the Charlottetown Accord

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As Translated by George Tombs, master of
ceremonies for the event.**

*Good people, beware of the things you say! Anything
can emerge
From a word you let drop in passing,
Anything, hatred and mourning.
And do not protest that you can trust your friends and
that you speak softly.
Listen carefully to this.*

Well, this quatrain from Victor Hugo is to let you know that the word you let drop in passing, when you vote, the YES or the NO, is very important: so important that you cannot simply base the word you choose on emotions, or on what Anne-Marie

Bourdouxhe, in the editorial of the current issue [of *Cité libre*] describes as anxiety, fear or impatience. We will have to use some reason, some analysis. Because it is no small matter to know whether we are going to live in a society in which personal rights, individual rights, take precedence over collective rights. It is no minor question of secondary importance to know whether we are going to live in a society in which all citizens are equal before the law and before the State itself. And it is no trivial matter to determine if there will be a spirit of brotherhood and of sharing in the society we are going to live in.

The choice we are going to make in the referendum, the choice of which society we want, has an impact on these three questions. And to know what choice to make, we have to look at the texts. I am not trying to say that those people who give preference to a collective society and collective rights over individual rights, do not have the right to state such a preference. I am saying to them that it is not just an emotional decision they are called on to make. We have to look at history — above all we have to look at contemporary history, the history of yesterday and today.

When collective rights take precedence over individual freedoms — as we see in countries where ideology shapes the collectivity, where race, ethnic origin,

language, and religion shape the collectivity — we see what can happen to the people who claim to live freely in such societies. When each citizen is not equal to all other citizens in the state, we are faced with a dictatorship, which arranges citizens in a hierarchy according to their beliefs. And when a person lives under the reign of unbridled capitalism, it is not sharing and justice that prevail, but rather the law of supply and demand. The implacable market decides how wealth is distributed.

So we must reflect on these questions. And to be in a position to reflect, I will have to read you some of the main items of the text which is called ‘the Consensus of Charlottetown’, the text on which citizens are asked to vote YES or NO. Unfortunately, high-level politicians and even high-level bankers want us to believe that voting YES is ‘a yes to Canada’ while NO is ‘a no to Canada’. This is a lie that must be exposed. The question ‘yes or no’ is just that: yes or no, do you want to reform, do you want to amend the Constitution of Canada on the basis of the so-called ‘Consensus of Charlottetown’. So let’s take a look at it.

Don’t worry, I don’t intend to go into too much detail. I imagine that whoever wanted to have a copy of the report has been able to obtain one. So I won’t read out all the items: far from it!

I will start with the Canada Clause, the first one telling us that ‘the Constitution of Canada, including the Charter of Rights and Freedoms, shall be interpreted in a manner consistent with the following fundamental characteristics’. Which means that when judges come to judge the validity or invalidity of a citizen’s challenge of a law of a province or of the federal government which undermines his freedoms and constitutional rights, the judges will have to rely on this Canada Clause. Well then, I submit to you that this Canada Clause offers us a hierarchy, a hierarchy of categories of citizens. We are not equals according to this Canada Clause. It all depends on where each individual stands. And I will name the six categories in which the eight or ten sections of the clause place you, the citizens. You will have to decide where your place is in that hierarchy.

I will start with category number one, the first and most important one, the clause referred to as 2.1c:

‘Quebec constitutes within Canada a distinct society, which includes a French-speaking majority, a unique culture and a civil law tradition.’

And, significantly, they add that *‘the role of the legislature and Government of Quebec is to preserve and protect the distinct society’*.

In other words, in interpreting any case which comes

before them, judges will have to bear in mind that in the province of Quebec, the government has the right to apply laws, the legislature has the right to pass laws, which will promote the unique culture of Quebec, and that the Charter of Rights and Freedoms must be interpreted taking this fact into account. It is not surprising that the cultural communities [an expression denoting Quebec's so-called ethnic minorities] who are not Quebecers of old stock, are worried: they are not a part of this unique culture, they are much lower down among the categories of the Charter. It also means that the Charter of Rights and Freedoms, currently enshrined in the Constitution, must be subject to interpretation taking into consideration the francophone majority. Collective rights, as voted into law by the majority in the National Assembly of Quebec, must guide judges in their interpretation of the Charter of Rights and Freedoms and, in fact, of the Constitution in its entirety.

Second category: 'the Aboriginal peoples of Canada ... have the right to promote their languages, cultures and traditions ... and their governments constitute one of three orders of government in Canada.' They will have governments, and legislatures, but it isn't made clear, we haven't seen the texts, but the Charlottetown Charter announces this news!

First of all, these governments are granted the right to invoke the notwithstanding clause, to invalidate the sections of the Charter which otherwise would protect individuals. I refer you to section 2, and item 43 [of the Canada Clause]. On the subject of Aboriginal peoples, section 2 says: ‘nothing in the Charter abrogates or derogates from Aboriginal rights and in particular any rights and freedoms relating to the exercise or protection of their languages, cultures or traditions.’ To which item 43 adds, in so many words: ‘the legislative bodies of Aboriginal peoples should have access to Section 33’, the notwithstanding clause. In other words, they want to give governments and legislatures to Aboriginal people, and they say there are eleven principal native languages in Canada, in addition to forty tribes and six hundred bands. I don’t know how many of these units will qualify as governments or legislatures. But in any case, we are forewarned there will be a lot of governments, and, by virtue of the fact they are governments — the item is clear about that — they will have the notwithstanding clause. And it will be practically impossible ever to get rid of this clause, which was included in the 1982 Constitution as the price to pay to obtain a Charter. So forget about seeing the notwithstanding clause disappear!

Third category of citizens. Take note of the first

category — ‘the role of the Government of Quebec is to preserve and promote the distinct society’; the second category — ‘Aboriginal peoples have the right to promote’; and the third category — ‘Canadians and their governments are committed to the vitality and development of [official language] minority communities’. A lot of people have noticed this. I won’t dwell on it. In English, the text reads ‘commitment’. In French it reads ‘*attachement*’, which is an emotional impulse, not a ‘commitment’. And this ‘*attachement*’ will return over and over, whenever it is a question of categories 3 and 4.

Notice that when it comes to equalization payments, the translator of the English word ‘commitment’ suddenly discovers the French word ‘engagement’ [a solid commitment], because Quebec is solidly committed to equalization. But only the French word ‘*attachement*’ is used to refer to the vitality and development of minority communities.

And we can see why: with your permission I will read you clause 1.3. Allow me to disabuse anyone of the notion that this ‘commitment’ protects minority communities, whether English-speaking in Quebec or French-speaking in Alberta and Saskatchewan. I will read to you the sub-clause, that is, paragraph 3 of clause 1: ‘Nothing in this section derogates from the

powers, rights or privileges [relating to language] of the legislatures or governments of the provinces.'

So whatever provinces want to give precedence to their provincial laws, Bill 101 or suchlike, are now given the green light. No wonder there is no more than an

'*attachement*' to the idea of the development of official language minority communities. Let me also read you item 28 which shows how the doddering fools meeting in Charlottetown considered the question of commitment to minority communities. Item 28 says, on the subject of labour market development and training, that powers should be passed over to the provinces, the way they are for forestry, mining, etc.

And the same phraseology keeps coming back:

'Considerations of service to the public in both official languages should be included in a political accord and be discussed as part of the negotiation of bilateral agreements.' Now there's a strong commitment for you!

They say the same thing in practically the same words for forestry and the other items: 'Considerations of service to the public in both official languages should be considered a possible part of such agreements.' So you can imagine what will happen when federal jurisdictions are handed over to the provinces. The federal government is obliged to offer services to any

citizen who requests it in one or the other of the two official languages. Does anyone think this will be maintained in Alberta, in Quebec, or possibly in Manitoba? Well, so much for the third category of citizens.

And now a fourth one. The fourth results from the commitment of Canadians and their governments: ‘Canadians are committed to racial and ethnic equality.’ First of all, this considerably weakens Section 15 of the Charter. Mentioning that Canadians are committed to racial equality is, I think, a little like saying ‘Well, I have some black and Jewish friends, you know, I’m committed to them, but let’s not talk about granting them rights.’

Same wording, but it doesn’t apply anyway, this ‘commitment’ when it comes to Aboriginal lands. Let me read you an outrageous item, item 46. [In the French text Mr. Trudeau refers to, item 46 is called ‘*La participation des non-Autochtones aux gouvernements autochtones*’ which means literally “The participation of non-Aboriginals in Aboriginal Governments,” while in the official English version of the text it is called “Provision for Non-Ethnic Governments.”] In other words, unless there are native people here at this meeting, the rest of us, you and I, can only *perhaps* participate in such a Government.

“Self-government agreements may provide for self-government institutions which are open to the participation of all residents in a region covered by the agreement.” I will not insult native people by saying they are the ones who wanted this clearly racist article. Let’s just say “people other than ourselves will be allowed onto our lands.” But the Canada Clause tells us Canadians are committed to racial and ethnic equality! Same wording in the following article: ‘Canadians are committed to a respect for individual rights’ ... Wouldn’t the word ‘commitment’ alone be nice? Oh but wait, I left out a few words: ‘Canadians are committed to a respect for individual and collective human rights and freedoms’.

Oh, I see, they want to please everybody. You, over here, you say you are committed to a society where collective rights are tops? OK. In your neck of the woods, people are ‘committed’ to collective rights. And you, over there, you prefer that individual rights win out? That’s quite all right, we are committed to your individual rights too. But what happens when a contradiction arises? When collective rights run headlong into individual rights as guaranteed by the Charter? How will the courts decide?

Is there any... we haven’t seen the actual text. All we’ve seen is this thing [the Consensus Report].

Apparently, they have written texts. But citizens are not interested in reading the legislative texts, they will have to be satisfied with generalities. Well, generalities.... They tell us, you know, don't worry about it, nobody will have to choose between collective rights and individual rights, since both are recognized. Well, really!

Here again, the same kind of commitment, in the following article, the following [part of Section 2 of the Canada Clause]: 'Canadians are committed to the equality of female and male persons.' I hope the ladies are happy to hear that people are committed to the principle of the equality of the two sexes and that the courts will have to weigh the commitment of Canadians to this equality. Not evidently to the extent that it could be at variance with a law created by the upper categories [of our hierarchy], which have solid commitments from the government, whereas in your case, you only have an 'attachment'.

By the way, the Canada Clause doesn't even mention that Canadians have a 'commitment' to the Charter of Rights and Freedoms. Because that document is another story, with clear and precise language.

On the subject of equality, let me read you section 15 of the [existing] Charter:

'Every individual is equal before and under the law

and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability'

That's what we had. But now, the people voting YES will have to say: 'all that will be weakened, because there are new interpretative clauses. Any interpretation of the Constitution, especially of the Canadian Charter of Rights and Freedoms, will have to agree with the fundamental characteristics.' So what they're in the process of saying to the judges is: if discrimination is based for example on colour, religion or age, the Charter applies; but in the case of the rights of the two sexes and the rights to cultural and racial diversity, Canadians are only committed. Which is akin to saying that those kinds of discrimination are less important. So, good-bye!

Well, now we have finished with category 4, and we move on to category 5 in the new hierarchy of rights of Canadian citizens. The fact that Canada is a democracy committed to a parliamentary and federal system, as well as to the rule of law, is a fact. There's no right to *promote*, there's no *commitment*, it's just a *fact*. But this fact is not even binding on Aboriginals, once you look at item 41, which lets them legislate according to

their traditions, their culture and all the rest.

And while we're in in the fifth category, how about the fact that 'Canadians confirm the principle of equality of the provinces at the same time as recognizing their diverse characteristics'. That's really something: they confirm the equality of the provinces, after having said in the same article, in a sub-clause, that Quebec is a *distinct* society and it is the *only* distinct province in the Constitution. So what is this now about telling the provinces they are all equal?

Moreover, if you read item 58, you will see other examples of inequality. You will see that new provinces being created do not have the same rights as existing provinces. It's a great idea to create provinces in the Far North, but don't imagine that will automatically give you the right to participate in the Senate on the same basis as the others or to participate in the amending formula. Well, so much for the fifth category...

Now you may ask me where are all the remaining people, all those who do not deserve to be included in this enumeration, all those who have been named in the Charter and who are not named in this Canada Clause. They are bunched together with -what was his name in L'Aiglon [a play by the French author Edmond Rostand, first presented in 1900]? 'And we the little

people, the privates, marching footsore' ...

[shout from the audience: "Flambeau!"]

Flambeau! Thanks! There's a cultured man! As I was saying, "And we, the little people, the privates, marching footsore and dirty, hungry, sick..." Well, that's all the rest of you, you are in the sixth category in this Canada Clause.

Let's leave the Canada Clause then, and talk about the ... no, wait a second, it's still the Canada Clause, but it's the third sub-paragraph. A real beauty!

'Nothing in this section derogates from the powers, rights or privileges of the Parliament or the Government of Canada, or of the legislatures or governments of the provinces, or of the legislative bodies or governments of the Aboriginal peoples of Canada, including any powers relating to language'. So it doesn't undermine the powers of any government. Whose power is it supposed to undermine? 'The rest of us, the little people, marching footsore and dirty!' So, now it's clear that everyone is really protected from... the Charter! The Canada Clause does not undermine the rights of all our politicians, it only undermines ourselves, as I have just explained to you, by diminishing the power of the Charter. It's either a disgrace, or something bordering on sheer stupidity, for them to state this so openly.

Well, let's move on to another clause. They talk of 'social and economic union'. OK, the social and economic union. Let's just summarize it by saying that article 4 is not enforceable, which means that they use great-sounding words, but it does not have the force of law. Much the same for the Canadian common market. They talk about a political agreement no-one has seen, and of future conferences, but this common market, which was the only thing the Canadian government was asking for in this 'Canada round', does not even appear in the final text, where there is only room for the provinces and the Aboriginals. Nothing for you, nothing for Canada! So get lost, if you are interested in making the common market a fact!

We now move on to federal institutions ... The Senate is elected ... but it can be elected by provincial legislatures, they already said that's the way Quebec would be appointing Senators. Which means literally that a provincial government can come between its citizens and the Parliament of Canada when it legislates in areas of federal jurisdiction. So not only do they give powers to the provinces, but in addition, they say: you can sit in the Senate and pass laws with us. That wouldn't be true if the Senators were elected, but it remains true when they are appointed by a provincial legislature: it is always the majority, that is,

the government that determines what people will say. That's what their Senate reform amounts to. Laws materially affecting [French] language or culture have to be adopted by a double majority of francophone Senators taking part in the vote. Imagine the case of a separatist government in Quebec which has not yet made Quebec independent, but which names its Senators. It will presumably send six Senators to Ottawa, in addition to which there will perhaps be other francophone Senators from other provinces, but the ones from Quebec have a veto. So, we will need the vote of a majority of Senators for a law to pass, which means that if ever the Government of Canada wants to improve the status of Francophones in the West or, God forbid! the anglophone minority of Quebec ... well, the separatists can use the veto. And it's not inconceivable. After all, we know that Quebec, [Liberal Premier Robert] Bourassa's federalist Quebec in fact, went to Alberta and Saskatchewan to plead against the francophones from those two provinces who were trying to get their rights recognized by their provincial Governments. Quebec pleaded in those provinces because they didn't want English-speaking Quebeckers to be able to say: we want the same thing. Its incredible, the lengths to which the narrow-mindedness of Quebec nationalism will go.

The Supreme Court ... The judges will be named on the basis of lists submitted by the provincial governments. That's a guarantee that the cause of the provinces will always win out over the cause of Canada itself. The provinces will name the judges of the Supreme Court, they will — once the Supreme Court is completely renewed — it will only consist of judges named by the provinces. And inevitably, the provinces will not name die-hard federalists, they will name people in line with their own views. And according to what we see here, because the ten provinces have signed this charter, or at least they haven't signed it yet but they have adopted it, they favour massive decentralization. Which means the judges will always hand down judgments in favour of the provinces. Of course, (this could have an unforeseen boomerang effect, but) the other provinces may start wanting more for themselves and be ready to give less to Quebec. Quebec only has three judges, the other provinces have six. What a mess it will be to have the three judges of Quebec always lining up on one side and the six on the other; people will cry out at the 'injustice' ... after having created this mess themselves!

House of Commons ... Given the time left to me, I won't talk about that.

Entering the First Ministers Conference into the Constitution. Well, it will always be ten against one as soon as you start deciding things in a Conference which has become a constitutional obligation.

Roles and responsibilities: that was the last point I wanted to raise. There's lots to say about that, but let me just say that this group of clauses on roles and responsibilities comes down to one thing: the federal government is to cede jurisdictions to the provinces. I am not saying that if the provinces had a top-notch record in applying their present exclusive jurisdictions everywhere.... Take education, for example. Quebec has control over education, and has had exclusive and complete control over education ever since the beginning of Confederation... Well, Quebec has the highest high-school drop-out rate in the Western world. I read that myself in *l'actualite* [the newsmagazine] a few months ago. The highest dropout rate: it's not the fault of *les Anglais*, it's not the fault of the federal government, it's our fault. Fifty percent of students graduating from high school fail their French entrance exam at Laval University. That's not the fault of les Anglais! Forty percent of high school students fail the entrance exams at the Universite de Montreal! Who wits it that prepared them for these exams? Was it communists? Or did we do that ourselves?

Take a look at the environment ... or just a minute, look at culture, at libraries for example. Ontario has four times more libraries than Quebec, taking into account the size of their respective populations. They spend four times as much in Ontario as in Quebec so dust the people can read.

Look at the environment, like sewage treatment systems for example. Ninety-five percent of cities and towns in Ontario have them, but only thirty-three percent in Quebec. And now these people would like to obtain new powers, while in fact they are doing a poor job of exercising the powers they already have. So, this whole section is really just a power grab! Let's go on to federal spending power. Well then, if this particular article becomes law, you can forget about new national programs to help out the smaller or poorer provinces, because there will always be a right to opt out if it's a national program. Provincial governments will be able to say: 'if I already have a compatible program me, I am opting out, and you, Ottawa are going to compensate me for it'. Inevitably, all the rich provinces will expect compensation. But no federal politician will vote for the rich provinces getting all that money! And so there won't be any for the poor provinces either. People always want to limit *federal* power to spend. But they neatly forget that the provinces make

abundant use of their own spending power. Have you ever wondered how it is the province of Quebec and the province of Ontario and the province of Alberta have diplomatic missions abroad? Do they have jurisdiction over foreign policy? Is that somewhere in the Constitution?

Or again, when they give money to African countries, to promote Quebec on the international scene, where do they get that money? From your taxes! *That's* spending power. The provinces never complain about their spending power, sometimes they even use it to give bursaries or to help francophones from other provinces in the case of Quebec, and it's the same thing for anglophone institutions who come to the assistance of Quebec anglophones. That's spending power. But now, they don't want the federal government to have spending power, so there will no longer be any shameful programmes like health insurance or hospitalization insurance: let's not have things like that! Let's instead give money to the provinces so that they remain unequal : the poorer provinces will have less-well funded programs, which will be the case with Quebec, and the rich provinces will be able to get the best of everything!

And on it goes... Immigration. '[A new provision should be added to the Constitution] committing the

Government of Canada to negotiate agreements with the provinces relating to immigration.' There are no limits on the provision, they talk of no limits. At least with Meech Lake there were some limits, but here there are none. So that means there there will no longer be a national immigration policy. All the provinces with their own policy will get one.

Same thing for the labour market, same thing for culture. It's true that provinces, when it comes to culture what is culture? ... you'll see how they defend these demands. Quebec doctors, apparently, when they do an appendicitis operation, they don't do it the same way as in Ontario? They have a special culture? And does the the same goes for haircuts? Well! The provinces want to have exclusive *jurisdiction* over cultural questions on their territory, but the federal government would continue to have *responsibilities*. I don't know whether words mean anything here, but the federal government would have *responsibilities* without having *jurisdiction*, because the provinces would have *jurisdiction*. This probably means that the federal government would pay money, enjoying *responsibilities*, while the provinces would actually have constitutional jurisdiction here.

Forestry, mining, tourism.... Canada will be the only country in the world unable to do promotion it-Nell

abroad for tourism. Sounds great? Housing... forget about federal money going into low-income housing. Recreation... it isn't defined either. Does this mean all the national parks in Canada, where people pursue recreational activities, all of that is going to be provincial? Nobody knows. Do you know what recreation is? No, I don't know either. We have recreational activities, but when they say in the Constitution that recreation is entirely a provincial jurisdiction, I have a lot of trouble with that.

Municipal affairs. OK, article 92 already lays that out. But what's all this about urban affairs? Does this mean there will no longer be any federal presence in the development of large cities? And yet, the federal government is railways, the post office, and I don't know how many investments in infrastructure, in federal buildings for example. The federal government will no longer have a word to say, when it comes to the development of cities.

I'm coming to the end, to the end. Yes. I'll stop here. Except that I would like to draw a conclusion.

Those people who plan to vote YES, because they are fed up with constitutional discussions, because they want to finish with it all, or because they are afraid of the instability of banks, just let me say a few words to them. This document is not an agreement. I will read

you what it is. I am looking at the preface, on page ii. They tell us that in the course of discussions, draft constitutional texts have been developed whenever possible. In particular, a rolling draft of legal text for Aboriginal peoples.

They don't want to show us those texts! They want us to judge on the basis of the texts I have here this evening. And yet they say that there are areas where the consensus was not unanimous. These dissents have been recorded in the chronological records of the meetings but not in this summary document. So, it's a *consensus* ...with some dissension.

But then they add: the asterisks. There are twenty six asterisks in the text that follows to indicate the areas where the consensus is to proceed with a political accord. So you think you will have finished with the Constitution by voting YES! You will have twenty six asterisks to resolve, without counting all the other unresolved issues, without counting the dissensions, and the six hundred Indian bands who will want to negotiate. You think you will have peace and quiet by voting YES! You will have peace and quiet if you vote No, because NO means we are fed up with the Constitutional debate, and we don't want to hear about it any more.

Let me tell you something else. If you think we have

finished, think about what Mr. Bourassa said two or three days ago: 'a YES vote is not irreversible, because the negotiations will continue, because we maintain our right of self-determination'. So the people who are voting YES to have peace and quiet evidently haven't listened to what Mr. Bourassa is saying, what Mr. [Gil] Remillard [Quebec minister of intergovernmental affairs] is saying. They may be listening to what the other Prime Minister is saying, but they have not listened to Mr. Bourassa. He is going to be back asking for more, that's what he is saying. The Allaire Report hasn't disappeared, it's still part of the Liberal Party platform, it has only been set aside for the time being. And the right of self-determination is still in the platform of the Liberal Party of Quebec. What does that all mean? It means the blackmail will continue if you vote YES.

I will make one last comment. If you vote YES, and the YES wins out, the decision will be irreversible. It is not like the pendulum of Confederation, which sometimes swings towards centralization and sometimes towards decentralization. The decision is irreversible. First of all because the veto will apply to the Senate, to the House of Commons, and to the Supreme Court. We will not be able to do anything with these institutions any more, without the consent of

all the provinces. And as far as jurisdictions are concerned, whatever has been transferred to the provinces -recreation, culture, all of that, even with a constitutional amendment it will be impossible to take it back from the provinces: because there is a lot of compensation for provinces refusing to give up powers they already have. So it will be irreversible.

And moreover, the sad fact is the federal government will have thrown overboard all its advantages, its bargaining power, because the federal government is left with very few advantages. Ottawa still had the power of disallowance and reservation, and the declaratory power. But in this contract [the Charlottetown Accord] it gives that up. And the federal government will be stripped naked if the YES side wins, it will never go after the notwithstanding clause, it will never go after the common market, it will have nothing to give in exchange.

So don't ask me how I am going to vote. But let me will tell you that if you want peace and quiet, you should vote NO to constitutional negotiations. The problem of Aboriginal peoples can be resolved in the legislatures. And once things have settled down, we can talk about how to put that in the Constitution. For the time being, they have made a mess, and this mess deserves a big NO.

Thank you very much.